

ESTATE OF HYMAN WIENER

OCTOBER 25, 1943.—Ordered to be printed

Mr. ELLENDER, from the Committee on Claims, submitted the following

REPORT

[To accompany H. R. 1049]

The Committee on Claims, to whom was referred the bill (H. R. 1049) for the relief of the estate of Hyman Wiener, having considered the same, report favorably thereon with the recommendation that the bill do pass without amendment.

The facts are fully set forth in House Report No. 690, Seventy-eighth Congress, first session, which is appended hereto and made a part of this report.

[H. Rept. No. 690, 78th Cong., 1st sess.]

The Committee on Claims, to whom was referred the bill (H. R. 1049) for the relief of the estate of Hyman Wiener, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Page 1, line 6, after the words "the sum of" strike out the remainder of the bill and insert in lieu thereof the language—"\$7,500, in full settlement of all claims against the United States for the death of Hyman Wiener, who was fatally injured when a United States Army plane fell on him at Montefiore Cemetery, Suffolk County, Long Island, New York, on December 7, 1941: *Provided*, That no part of the amount appropriated in this Act in excess of 10 per centum thereof shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with this claim, and the same shall be unlawful, any contract to the contrary notwithstanding. Any person violating the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding \$1,000."

The purpose of the proposed legislation is to pay to the estate of Hyman Wiener, the sum of \$7,500, in full settlement of all claims against the United States for the death of Hyman Wiener, who was fatally injured when a United States Army plane fell on him at Montefiore Cemetery, Suffolk County, Long Island, N. Y., on December 7, 1941.

STATEMENT OF FACTS

On December 7, 1941, at about 10:40 a. m., an aviation cadet, piloting an Army airplane, took off from Farmingdale Airport, Long Island, N. Y., on a properly authorized training flight. About an hour later, while the plane was circling the airport for a landing, the engine suddenly stopped, and the pilot was unsuccessful

in his efforts to restart it. He thereupon selected what appeared to him to be the best available field for an emergency landing, the property of the Montefiore Cemetery Corporation, near Pine Lawn, Suffolk County, Long Island. As the plane reached the ground it struck two parked automobiles and several persons standing nearby, one of whom, Hyman Wiener, age 34 years, was pronounced dead on arrival at a hospital.

The pilot stated that when nearing the field he did not see any cars or other obstacles except the trees over which he approached, and that the cars must have been in his "blind spot."

Wiener was married, and is survived by his wife and two children, ages 4 and 1 years, respectively, who were dependent upon him for support. He was an instructor at Boys High School in Brooklyn.

The War Department admits liability, saying in its report:

"Since it appears that Mr. Wiener came to his death through an instrumentality of the Government for which the Government is responsible, the Department, while not prepared to pass upon the amount that should be granted, will interpose no objection to the enactment of legislation in such amount and to such beneficiaries, including the natural beneficiaries named above, as Congress may determine."

Taking into consideration the fact that the deceased was a young man, married, with wife and two small children, dependent upon him, that as high-school instructor he commanded an excellent salary, and that he met his death through no fault of his own, your committee feel that an award to his estate of \$7,500 is not excessive, but entirely reasonable, and have amended the bill to pay such amount.

Your committee, therefore, recommend favorable consideration of the proposed legislation.

Appended hereto is the report of the War Department, together with other pertinent evidence, all of which is made a part of this report.

WAR DEPARTMENT,
Washington, June 19, 1942.

HON. DAN R. MCGEHEE,
*Chairman, Committee on Claims,
House of Representatives, Washington, D. C.*

DEAR MR. MCGEHEE: Careful consideration has been given to the bill H. R. 6987, Seventy-seventh Congress, for the relief of Mollie Wiener Goldfein, which you transmitted to the War Department under date of April 29, 1942, with request for information and the views of the Department relative thereto.

The purpose of the proposed legislation is to pay to Mollie Wiener Goldfein, of 77-26 Sixty-sixth Drive, Middle Village, Queens County, N. Y., the sum of \$5,000 in full settlement of all claims against the United States for the death of her son, Hyman D. Wiener, who was killed on December 7, 1941, when struck by a United States Army airplane in Montefiore Cemetery, in Long Island.

On December 7, 1941, at about 10:40 a. m., an aviation cadet, piloting an Army airplane, took off from Farmingdale Airport, Long Island, N. Y., on a properly authorized training flight. About an hour later, while the plane was circling the airport for a landing, the engine suddenly stopped, and the pilot was unsuccessful in his efforts to restart it. He thereupon selected what appeared to him to be the best available field for an emergency landing, the property of the Montefiore Cemetery Corporation, near Pine Lawn, Suffolk County, Long Island. As the plane reached the ground it struck two parked automobiles, and several persons standing nearby, one of whom, Hyman Wiener, age 34 years, was pronounced dead on arrival at a hospital.

The pilot stated that when nearing the field he did not see any cars or other obstacles except the trees over which he approached, and that the cars must have been in his "blind spot."

No claim has been filed arising out of this accident.

The records of the Meadowbrook Hospital show the only dependent of Mr. Wiener as his wife, Ruth S. Wiener, 8015 Bay Parkway, Brooklyn, N. Y., age unknown. It is also understood that Mr. Wiener was survived by two children, ages 3 years, and 4 months, respectively.

In view of the fact that the only evidence available to the War Department indicates that Molly Wiener Goldfein, the beneficiary of the bill, was not dependent upon her deceased son and also shows that Ruth S. Wiener, the wife, survives the deceased with two dependent children, the War Department feels constrained

to object to the bill in its present form. However, since it appears that Mr. Wiener came to his death through no fault or negligence on his part but rather through an instrumentality of the Government for which the Government is responsible, the Department, while not prepared to pass upon the amount that should be granted, will interpose no objection to the enactment of legislation in such amount and to such beneficiaries, including the natural beneficiaries named above, as Congress may determine.

It is suggested that the estate of Mr. Wiener be made the beneficiary of any relief which Congress may grant.

Sincerely yours,

HENRY L. STIMSON, *Secretary of War.*

AFFIDAVIT OF MOLLIE WIENER GOLDFEIN

STATE OF NEW YORK,

County of Queens, ss:

Mollie Wiener Goldfein, being duly sworn deposes and says: I reside at 77-26 Sixty-sixth Drive, Middle Village, Queens County, N. Y., and am the mother of Hyman D. Wiener, who was killed on December 7, 1941.

My son, Hyman D. Wiener, was killed on December 7, 1941, when a plane attached to the Thirty-third Pursuit Group of the Fifty-eighth Squadron, landed on top of two parked automobiles at Montefiore Cemetery in Long Island. Attached hereto and made part of this affidavit is a page of the New York Times of December 8, 1941, which gives a complete account of the happening. This account is made part of this affidavit. Also annexed hereto and made part hereof is a death certificate wherein Theo. J. Curphey, M. D., chief medical examiner, states that he found him dead and stating that the cause of his death was the shock due to the multiple fracture of the lower extremities. These exhibits cover the entire situation with respect to his death. It will be noted that my son was 33 years old and a high-school teacher. He left him surviving a wife, Ruth, and two children; one 3 years old, and one 4 months old. In addition to these dependents, he had been contributing the sum of \$8 a month toward my support and one-half the cost of my clothing. My other son, Solomon Wiener, also contributed \$8 a month and the other half of the cost of my clothing.

I am 60 years of age and now married to Louis Goldfein, who receives \$17 a month as old-age assistance. I did not receive any old-age assistance, but have been supported by my two sons.

I understand that my dead son's wife has made an application for a similar bill to allow her compensation for the death of her husband.

I respectfully submit that I am entitled to some consideration as one of his dependents, and ask that I be granted a reasonable allowance as one of the dependents of my son, Hyman D. Wiener. In view of the fact that the number of years left to me to live are not very great, I respectfully request that I be allowed the sum of \$1,000 to cover the loss of the contributions from my deceased son.

MOLLIE WIENER (her X mark) GOLDFEIN.

Witnessed by—

SOLOMON D. WIENER.

Sworn to before me this 7th day of March 1942.

MORRIS J. SHULMAN,
Notary Public, Queens County.

Commission expires March 30, 1943.

NEW YORK STATE DEPARTMENT OF HEALTH

Division of Vital Statistics

CERTIFICATE OF DEATH

Dist. No. 2950.

Registered No. 1234

Place of death: State of New York.

County: Nassau.

Town: Hempstead.

Village: East Meadow.

No. ——— Meadowbrook Hospital.

Usual residence of deceased:

State: New York.

County: Kings.

City: Brooklyn.

No. 8015 Bay Parkway Street.

Is residence within limits of city or incorporated village? Yes.

Full name: Hyman D. Wiener. Sex: Male. Color or race: White. Married.

Name of wife: Ruth Schterman.

Date of birth (month, day, year): October 9, 1908.

Age: 33 years, 1 month, 28 days.

Usual occupation: School teacher.

Industry or business: High school.

Birthplace (city or town) (State or country): United States.

Father's name: Asher Wiener.

Birthplace (city or town) (State or country): Russia.

Mother's maiden name: Mollie Shanoff.

Birthplace (city or town) (State or country): Russia.

The above is true to the best of my knowledge.

W. WILSON,

Records of Medical Examiners Office.

Place of burial, cremation, or removal: Mount Carmel Cemetery. Date of burial: December 9, 1941.

Undertaker or person in charge: Memorial Chapel, New York City, N. Y. Undertaker's license No. 5280.

Date received: December 8, 1941.

FREDERICK HITCHERICH,

Registrar or Subregistrar.

MEDICAL CERTIFICATION

Date of death: December 7, 1941.

I hereby certify that I attended deceased. I saw him dead on December 8, 1941.

To the best of my knowledge, death occurred on the date stated above, at 12:45 p. m.

Immediate cause of death: Multiple fracture of the lower extremities due to shock—accidental.

If death was due to external cause, fill in the following:

(a) Accident, suicide, or homicide (specify): Accidental.

(b) Date of occurrence: December 7, 1941.

(c) Where did injury occur? Pinelawn, Suffolk, N. Y.

(d) Did injury occur in or about home, on farm, in industrial place, in public place: Pinelawn Cemetery. While at work? No.

THEO. J. CURPHEY, M. D.,

Chief Medical Examiner.

Date: December 8, 1941.

Burial permit issued by Frederick Hitcherich. Date of issue: December 8, 1941.

I, Frederick Hitcherich, registrar of vital statistics in the town of Hempstead, Nassau County, N. Y., do hereby certify that the above is a true and exact transcript of a copy of a registered certificate of death of Hyman D. Wiener as contained in the town records.

In testimony whereof, I have hereunto set my hand and affixed the official seal as registrar in said town, this 28th day of February 1942, at Hempstead, N. Y.

[SEAL]

FREDERICK HITCHERICH,

*Registrar of Vital Statistics,**Town of Hempstead, Primary District, No. 2950.*

AFFIDAVIT OF SOLOMON WIENER

STATE OF NEW YORK,

County of Queens, ss.:

Solomon Wiener, being duly sworn deposes and says: I am the son of Mollie Wiener Goldfein, the claimant herein, and the brother of the deceased Hyman D. Wiener and I reside at 77-26 Sixty-sixth Drive, Middle Village, Long Island.

This affidavit is made by me in order to substantiate the statements of my mother as to her dependency on my deceased brother. My brother and I each contributed \$8 a month to my mother's support and in addition thereto divided the cost of her clothing. I am married and have my own family to support in addition to the amounts allotted by me to my mother.

The facts as stated in my mother's affidavit are true to the best of my knowledge and belief and I join in her request for an allowance for her.

SOLOMON WIENER.
Solomon D. Weiner.

Sworn to before me this 7th day of March 1942.

MORRIS J. SHULMAN,
Notary Public, Queens County.

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